

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CLENARD CEBRON WADE,

Plaintiff,

v.

FRED FOULK,

Defendant.

Case No. [14-cv-04387-VC](#)(PR)

**ORDER ADMINISTRATIVELY
CLOSING CASE WITHOUT
PREJUDICE TO FILING MOTION TO
ADD CLAIMS IN CASE NO. 13-4636
TEH (PR)**

On September 5, 2014, Petitioner Clenard Cebron Wade, a state prisoner incarcerated at the High Desert State Prison in the Eastern District of California, filed this habeas petition in the Eastern District on a form indicating it was filed under 28 U.S.C. § 2241. On September 26, 2014, the Eastern District transferred Wade's petition to this district on the ground that Wade had filed a petition under 28 U.S.C. § 2254 challenging his conviction entered by the Contra Costa County Superior Court, which is located in this district. On October 17, 2014, Wade submitted a letter to the Court indicating that, because he filed his petition under § 2241, it had committed error in concluding that his petition was filed under § 2254.

The plain text of 28 U.S.C. § 2241 and 28 U.S.C. § 2254 are similar. *White v. Lambert*, 370 F.3d 1002, 1005-06 (9th Cir. 2004), *overruled on other grounds by Hayward v. Marshall*, 603 F.3d 546 (9th Cir. 2010). Section 2241 authorizes "a district court to issue a writ of habeas corpus when a federal or state prisoner establishes that he 'is in custody in violation of the Constitution or laws or treaties of the United States.'" *Id.* at 1006 (citing 28 U.S.C. §§ 2241(a) and (c)(3)). The relevant subsection of 28 U.S.C. § 2254 authorizes a district court to issue "a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court . . . on the ground

1 that he is in custody in violation of the Constitution or laws or treaties of the United States.” *Id.*
2 (citing 28 U.S.C. § 2254(a)). Section 2254 implements “the general grant of habeas corpus
3 authority found in § 2241, as long as the person is in custody pursuant to the *judgment* of a state
4 court, and not in state custody for some other reason, such as pre-conviction custody, custody
5 awaiting extradition, or other forms of custody that are possible without a conviction.” *Id.*
6 (emphasis in original). Section 2254 did not create an alternative to the habeas corpus remedy
7 provided in § 2241, but imposed additional requirements on state prisoners seeking habeas relief
8 who were in custody pursuant to a state court judgment. *Id.* Only when § 2254 is not available to
9 a state prisoner because he is not in custody may he resort to § 2241. *Id.* at 1007. Thus, “when a
10 [state] prisoner begins in the district court, § 2254 and all associated statutory requirements apply
11 no matter what statutory label the prisoner has given the case.” *Id.* To determine whether a
12 petitioner is in custody at the time he filed his habeas petition, what matters is whether the
13 prisoner’s custody is attributable, at least in part, to a judgment of a state court. *Id.* at 1008.

14 Because Wade was in custody pursuant to a state court judgment at the time he filed this
15 petition, it is properly brought under 28 U.S.C. § 2254 and not 28 U.S.C. § 2241. The court in the
16 Eastern District of California did not err when it construed Wade’s petition as one under § 2254,
17 regardless of what form it was written on.

18 Furthermore, the claims Wade asserts in this petition are similar to the claims in his
19 previous petitions he filed in this Court under § 2254. For instance, in this petition Wade alleges
20 that the trial court relied on inaccuracies in his probation report and a “priors” packet provided by
21 the Department of Corrections to enhance his conviction and sentence. This is similar to Wade’s
22 claim in his previous petition that his sentence was improperly enhanced with prior prison
23 convictions. *See Wade v. Foulk*, C 13-4666 VC (PR), Doc. no. 5 (Amended Petition) at 6 (“all
24 priors used were not verified and authenticated by the Department of Corrections”). Likewise, in
25 this case, Wade asserts that the judge was biased against him. In the previous case, Wade asserted
26 that the trial and appellate judges were close colleagues and “complicit in extrinsic fraud.” *See*
27 *Wade v. Foulk*, C 13-4666 VC (PR), Doc. no. 5 at 7.

28 The Court administratively closed case numbers C 13-4666 VC (PR) and C 14-2627 VC

(PR) without prejudice to Wade filing a motion to amend his petition in his earliest filed § 2254 petition, case number C 13-4636 TEH (PR) so that Wade could bring all of his claims in one petition before one judge. For the same reason, this case is administratively closed without prejudice to Wade bringing a motion to amend his petition in case number C 13-4636 TEH (PR) to add claims from this petition.

CONCLUSION

Based on the foregoing, the Court orders as follows:

1. This case is administratively closed without prejudice to Wade bringing a motion to amend in case number C 13-4636 (TEH) (PR).

2. Because the case is administratively closed, the Clerk of the Court shall not charge a filing fee.

3. The Clerk of the Court shall terminate all pending motions and close the file.

4. The Clerk of the Court shall send a copy of this order to District Judge Thelton Henderson.

IT IS SO ORDERED.

Dated: October 28, 2014



VINCE CHHABRIA
United States District Judge